

ESTTA Tracking number: **ESTTA589187**

Filing date: **02/25/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	NIHC, Inc.		
Entity	Corporation	Citizenship	Colorado
Address	701 Southwest Broadway Portland, OR 97205 UNITED STATES		

Attorney information	William O. Ferron, Jr. Seed IP Law Group LLP 701 Fifth Avenue, Suite 5400 Seattle, WA 98104 UNITED STATES billf@seedip.com, litcal@seedip.com Phone:206-622-4900
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Applicant Information

Application No	85974272	Publication date	02/25/2014
Opposition Filing Date	02/25/2014	Opposition Period Ends	03/27/2014
Applicant	Van Dunk, Leonard Calvin 6836 Hills Drive New Port Richey, FL 34653 USX		

Goods/Services Affected by Opposition

Class 025. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Hats; Hunting boot bags; Hunting jackets; Hunting pants; Hunting shirts; Hunting vests; Pants; Shirts; Shorts; T-shirts

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1409938	Application Date	01/31/1986
Registration Date	09/16/1986	Foreign Priority Date	NONE
Word Mark	NORDSTROM RACK		
Design Mark			
Description of Mark	NONE		


Goods/Services	Class 042. First use: First Use: 1972/10/00 First Use In Commerce: 1972/10/00 RETAIL MEN'S AND WOMEN'S CLOTHING STORESERVICES		
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U.S. Registration No.	2980055	Application Date	10/16/2002
Registration Date	07/26/2005	Foreign Priority Date	NONE
Word Mark	NORDSTROM RACK NR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2001/04/00 First Use In Commerce: 2001/04/00 Retail store [and online retail] services, all in the field of apparel, footwear, small leather goods, eyewear, jewelry, and bath, body and personal care products; retail [and online retail] giftshop services		

U.S. Registration No.	3866811	Application Date	02/23/2010
Registration Date	10/26/2010	Foreign Priority Date	NONE
Word Mark	RACK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1990/00/00 First Use In Commerce: 1990/00/00 retail store services and mail order catalog services featuring apparel, footwear, fashion accessories and gifts		

U.S. Registration No.	3962979	Application Date	02/23/2010
Registration Date	05/17/2011	Foreign Priority Date	NONE
Word Mark	THE RACK		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1990/00/00 First Use In Commerce: 1990/00/00 retail store services, online retail store services and mail order catalog services featuring apparel, footwear, fashion accessories and gifts

U.S. Registration No.	3893991	Application Date	05/27/2010
Registration Date	12/21/2010	Foreign Priority Date	NONE
Word Mark	NORDSTROM RACK		
Design Mark			
Description of Mark	The mark consists of the word "NORDSTROM" above the word "RACK".		
Goods/Services	Class 035. First use: First Use: 2008/09/25 First Use In Commerce: 2008/09/25 Retail store services featuring apparel, footwear, fashion accessories and gifts		

Attachments	78976100#TMSN.gif(bytes) 77942725#TMSN.jpeg(bytes) 77942736#TMSN.jpeg(bytes) 85049432#TMSN.jpeg(bytes) NOO Van Dunk.pdf(225669 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/William O. Ferron, Jr./
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Name	William O. Ferron, Jr.
Date	02/25/2014

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NIHC, Inc.,)	
)	Opposition No. _____
Opposer,)	
)	Serial No. 85/974272
v.)	
)	
Leonard Calvin Van Dunk,)	
)	Attorney Docket No. 690097.80128
Applicant.)	

Notice of Opposition

NIHC, Inc. ("NIHC"), having an address at 701 Southwest Broadway, Fourth Floor, Portland, Oregon 97205 believes it will be damaged by registration of the mark RUTT "N" RACKS HUNT CLUB WIZARDS OF WHITETAILS and Design as shown in U.S. Trademark Application Serial No. 85/974272 ("the '272 Application") which was filed July 1, 2013 in class 25 and published for opposition on February 25, 2014.

The grounds for this Opposition are as follows:

1. Opposer, through its commonly owned and controlled licensee Nordstrom Inc. ("Nordstrom"), operates retail department stores and online retail stores and is engaged in the marketing and sale of a wide variety of apparel, gifts and accessories in interstate commerce, including men's apparel, men's accessories and men's footwear.
2. Since at least as early as 1990, Nordstrom adopted and has used the marks RACK, THE RACK and variants thereof ("RACK Marks") in interstate commerce in the United States in connection with retail store services featuring apparel, gifts, accessories and other goods, including hats, bags, jackets, pants, shirts, vests, shorts and t-shirts.
3. Nordstrom applied for and received US Trademark Registration Nos. 1,409,938, 2,980,055, 3,866,811, 3,962,979, and 3,893,991 for the marks NORDSTROM RACK, NORDSTROM RACK NR and Design, RACK, THE RACK and NORDSTROM RACK (stylized) all of

which predate the present application. These registrations have been assigned by Nordstrom to NIHC, which has exclusively licensed the marks shown in the registrations to Nordstrom.

4. Since 2009 and before Applicant's adoption of its mark, Nordstrom has used the mark NORDSTROM RACK for clothing.

5. Since commencing use of its RACK Marks as described above, Opposer and its licensee Nordstrom have generated substantial revenue from its retail services and the sale of goods in connection with the marks in the United States. Additionally, Opposer and its licensee Nordstrom have expended substantial sums of money, time and effort in maintaining, advertising, promoting and popularizing its RACK Marks in the United States.

6. As a result of such use of the RACK Marks, and the advertising and promotion of its RACK retail store services and related products sold in connection with those services, Opposer's RACK Marks have become well known in the United States and are recognized as identifying the high-quality services and goods of Opposer and its licensee Nordstrom. Thus, its RACK Marks and the associated goodwill are valuable assets of Opposer.

7. Applicant has applied on an intent-to-use basis to register the RUTT "N" RACKS HUNT CLUB WIZARDS OF WHITETAILS and Design mark shown in the '272 Application in International Class 25 for the following goods and services "Hats; Hunting boot bags; Hunting jackets; Hunting pants; Hunting shirts; Hunting vests; Pants; Shirts; Shorts; T-shirts. "

8. RACKS is a dominant portion of Applicant's mark, as seen in the image of the mark copied below.



9. Applicant's mark RUTT "N" RACKS HUNT CLUB WIZARDS OF WHITETAILS and Design in Class 25 for the goods and services described in the '272 Application is confusingly

and deceptively similar to Opposer's RACK Marks for its above-described goods and services, such that the trade and purchasing public will be confused by and deceived into believing that Applicant's services originate with Opposer and its licensee Nordstrom, or are otherwise authorized by, sponsored by, licensed by, affiliated with, or associated with Opposer.

10. Upon information and belief, Applicant has not made use of RUTT "N" RACKS HUNT CLUB WIZARDS OF WHITETAILS and Design in commerce in or into the United States as a trademark in connection with the services listed in the '272 Application or any other goods or services prior to the claimed July 1, 2013 filing date of the '272 Application.

11. By reason of the foregoing, Opposer would be greatly damaged by the registration of the mark RUTT "N" RACKS HUNT CLUB WIZARDS OF WHITETAILS and Design to Applicant.

WHEREFORE, Opposer prays that this Opposition be sustained, Applicant's application be denied and the mark refused registration.

Correspondence Address

Please direct all communications to:

William O. Ferron, Jr.

BillF.docketing@SeedIP.com

LitCal@SeedIP.com

SEED IP Law Group PLLC

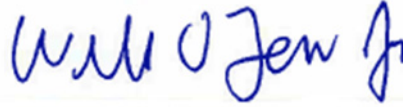
701 Fifth Avenue, Suite 5400

Seattle, Washington 98104

DATED this 25th day of February, 2014.

Respectfully submitted,

SEED IP Law Group PLLC

A handwritten signature in blue ink, appearing to read "William O. Ferron Jr.", is written over a light blue horizontal line.

William O. Ferron, Jr.
701 Fifth Avenue, Suite 5400
Seattle, Washington 98104
Telephone (206) 622-4900
Facsimile: (206) 682-6031

Attorneys for Opposer NIHC, Inc.

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Certificate of Service

I hereby certify that on this 25th day of February, 2014, the foregoing **Notice of Opposition** was served upon Applicant's counsel by United States first-class mail, postage-prepaid, addressed as follows:

Matthew H. Swyers
The Trademark Company
344 Maple Ave W, PMB 151
Vienna, VA 22180-5612

/Anne Calico/
Anne Calico